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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/736,863

12/16/2003

Robert Emmett Atkinson

AEWI-1

5348

34485 7590 10/08/2008

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EXAMINER

KAHELIN, MICHAEL WILLIAM

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

10/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/736,863	<b>Applicant(s)</b> ATKINSON ET AL.	
	<b>Examiner</b> MICHAEL KAHRELIN	<b>Art Unit</b> 3762	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29,30,32,34-36,38,40-44 and 46-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29,30,32,34-36,38,40-44 and 46-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20080623</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 29, 30, 32, 34-36, 38, 40-44, and 46-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osypka (US 6,738,674, hereinafter "Osypka") in view of Huepenbecker et al. (US 6,289,251, hereinafter "Huepenbecker").

4. In regards to claims 29, 34, 35, 41, and 43, Osypka discloses the essential features of the claimed invention including an electrical lead (312) with a lumen extending therethrough (Fig. 7) and a distal exit port distal of the one or more distal electrodes (322a and 322b); and an anchoring device (Fig. 11) including a self-expanding anchor (60) and an elongate polymeric tether (14) extending proximally from

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the anchor, extending through the proximal entry port of the lead (Fig. 7), and wherein the tether is longitudinally movable in the lumen of the lead such that the lead may be advanced over the tether (Fig. 9). Osypka does not disclose that the tether is tied by knot or swaged to the anchor. Huepenbecker teaches attaching anchors to tethers by tying by knot or swaging (col. 4, lines 19-26) to provide the predictable result of securely fixing an anchor with conventional means. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Osypka's invention by attaching the anchor to the tether by tying by knot or swaging to provide the predictable result of securely fixing an anchor with conventional means.

5. In regards to claims 30, 36, and 42, Osypka discloses a connector for limiting longitudinal movement between the lead and anchoring device (col. 7, lines 2-6; by limiting movement between the tether and anchor, movement is limited between the lead and anchor), and is insertable into the lead before the tether is deployed.

6. In regards to claims 40 and 46, the tether is detachable from the lead using, e.g., scissors or wire cutters.

7. In regards to claims 47-49, the lead is an implantable pacing lead (col. 1, line 15).

8. In regards to claims 32, 38, and 44, Osypka's modified invention discloses the essential features of the claimed invention except for a tether that comprises a braid. It is well known in the pacing arts to provide tethers, such as Osypka's, with braids, such as braided conductors, to provide the predictable results of strong and flexible lead elements that resist breaking. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Osypka's

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invention by providing a tether comprising a braid to provide the predictable results of strong and flexible lead elements that resist breaking.

***Response to Arguments***

9. Applicant's arguments with respect to claims 29, 30, 32, 34-36, 38, 40-44, and 46-49 have been considered but are moot in view of the new ground(s) of rejection, necessitated by amendment.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL KAHRELIN whose telephone number is (571)272-8688. The examiner can normally be reached on M-F, 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/  
Primary Examiner, Art Unit 3762

/Michael Kahelin/  
Examiner, Art Unit 3762